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No. 86

Supreme Court, U.S.
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IN THE
Supreme Court of the United States
OCTOBER TERM, 1986

GEORGE GEBRAYEL
Petitioner.
v.
UNITED STATES OF AMERICA,
Respondent.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

GEORGE GEBRAYEL PRO SE

Attorney for
George Gebrayel
Petitioner.

SEPTEMBER 9, 1986

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Filed July - 9 1986
Cathy A. Catterson,
clerk
U.S. Court of Appeals

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,	)	
	)	CA
Plaintiff-Appellee,	)	No. 84-1296
	)	85-1277
-vs-	)	
	)	ORDER
GEORGE GEBRAYEL,	)	
	)	
Defendant-Appellant.	)	
	)	

BEFORE: SCHROEDER, CANBY AND BOOCHEVER,
CIRCUIT JUDGES

The panel has voted unanimously to deny the petition for rehearing and suggestion for rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc and no judge of the court has requested a vote to rehear the matter en banc.

The petition for rehearing is hereby denied and the suggestion for rehearing en banc is rejected.

NOT FOR PUBLICATION

Filed Apr 30 1986
Cathy A. Catterson, clerk
U.S. Court of Appeals

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee,	)	Nos. 84-1296, 85-1277
-vs-	)	DC No. CR LV 83-89-03 LDG
GEORGE GEBRAYEL, Defendant-Appellant.	)	**MEMORANDUM**

Appeal from the United States District Court for the District of Nevada Honorable Lloyd D. George, District Judge, presiding Argued and Submitted March 1, 1986 -- San Francisco, California

BEFORE: SCHROEDER, CANBY and BOOCHEVER, Circuit Judges.

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Cir. R. 21.

In these consolidated appeals, George Gebrayel challenges this conviction for Currency Transaction Reporting Act (CTRA) violations and the district court's denial of his motion for a new trial. A jury found Gebrayel guilty on all of three counts charged, and he was sentenced to two years' imprisonment. We affirm.

BACKGROUND

Gebrayel's conviction resulted from an Internal Revenue Service undercover investigation of the Pan American International Bank in Las Vegas. The Bank was a new operation when the investigation began in 1982, and it specialized in assisting foreign nationals, especially those from Central and South America, with complex international transactions.[1]

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1 Information obtained from an apparent misinformed confidential source initially

Gebrayel was vice chairman of the Bank's board of directors; the evidence showed his direct involvement in several transactions that constituted CTRA violations.

IRS Special Agent Berry posed as a liaison officer for the Mexico City Police Department, and he approached the Bank for assistance with several large transactions that he wanted handled secretly. Initially, Berry dealt with Bank Chairman Rafael Acosta. Acosta asked Gebrayel to assist Berry, and Gebrayel enlisted the aid of Bank employee Richard Rodriguez. Rodriguez has been employed by another bank and was familiar with international transactions and CTRA requirements. Rodriguez and Gebrayel

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led the government to believe that the Bank was laundering illegal proceeds of drug transactions. The government's investigation, however, produced no evidence of any connection with narcotics activities.

worked together to establish bank accounts under false names on Berry's behalf. Gebrayel also arranged transactions with Berry's money, sometimes without Berry's knowledge, that included purchasing stock in the Bank and depositing money in interest-bearing accounts in other institutions in Gebrayel's name.

Several of the transactions Berry requested involved more than $10,000, thereby triggering the CTRA reporting requirements. See 31 U.S.C. § 5313; 31 C.F.R. § 103.22(a). Currency Transaction Reports (CTR's) were not filed for most of the Berry transactions, and, when they were, they included false statements.

Acosta, Gebrayal, (sic) Rodriguez and the Bank were indicted for conspiracy to violate CTRA, 18 U.S.C. § 371, failure to file timely CTR's on transactions aggregating to more than $100,000 in a 12-

month period, 18 U.S.C. §§ 5313, 5322(b); and aiding and abetting the filing of a false statement with the government, 18 U.S.C. §§ 2, 1001. The Bank pleaded guilty, and it was fined. Acosta was found not guilty on all charges by a jury. The same jury convicted Gebrayel.

Rodriguez initially pleaded guilty to the conspiracy charge under a plea bargain. He was to testify for the government, receive only probation, and have all other charges against him dropped. Shortly after he testified at Acosta's and Gebrayel's trial, Rodriguez asked to withdraw his guilty plea in a motion unopposed by the government. The court granted Rodriguez's motion after the government represented that further negotiations with Rodriguez, leading either to a misdemeanor plea or pretrial diversion, would result. Rodriguez was

not prosecuted further. Gebrayel contends that this scenario was prearranged, that the government kept this agreed arrangement from him and that he is entitled to a new trial because Rodriguez's testimony misstated the true arrangement. Assuming the truth of the alleged prearrangement, the district court denied Gebrayel a new trial.

DISCUSSION

I. Unconstitutional Vagueness

Gebrayel first argues that the penalty provision of CTRA, specifically 31 U.S.C. § 5322(b),[2] is unconstitutionally

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2 31 U.S.C. § 5322(b) provides:

A person wilfully violating this subchapter or a regulation prescribed under this subchapter . . . while violating another law of the United States or as part of a pattern of illegal activity involving transactions of more than $100,000 in a 12-month period, shall be fined not more than $500,000, imprisoned for not more than 5 years, or both.

vague. Because of his repeated CTRA violations, the government prosecuted Gebrayel for a felony under the part of Section 5322(b) that enhances penalties when CTRA violations are part of a pattern of illegal activity. Gebrayel considers the statute unconstitutional because "pattern of illegal activity" is susceptible of more than one meaning. Interpretation of the statute is a question of law reviewed de novo. United States v. Varbel, 780 F.2d 758, 761 (9th Cir. 1986).

Gebrayel argues that "pattern of illegal activity" could mean either of two things. Individual CTRA violations could aggregate to constitute a pattern of illegal activity, as the government charged here. Alternatively, the phrase could refer to CTRA violations that occurred as part of illegal activities

unrelated to the reporting requirements, such as violations of state or local laws. Gebrayel contends that the lack of clarity renders the statute unconstitutionally vague.

We do not regard Section 5322(b) as vague merely because it may encompass more than one category of repeated illegal activity. To succeed in his contention that the section is unconstitutionally vague, Gebrayel must demonstrate that the statute is vague as applied to his conduct in this case. United States v. So, 755 F.2d 1350, 1355 (9th Cir. 1985). We have held, however, that Congress clearly intended to punish as a felony multiple violations of CTRA itself. United States v. Beusch, 596 F.2d 871 (9th Cir. 1979). In Beusch, we reversed the dismissal of a felony indictment appended to an indictment for

377 admitted misdemeanor CTRA violations. Without making a factual finding of violation, we held that a series of misdemeanor violations could constitute a pattern of illegal activity under Section 5322(b), warranting punishment as a felony. Id. at 878-79; accord United States v. Dickinson, 706 F.2d 88, 91-92 (2d Cir. 1983).

Congress's intent to enhance the punishment for multiple violations of CTRA is also apparent from the legislative history of Section 5322. See So, 755 F.2d at 1354-55. That history, and our decisions under it, is fatal to Gebrayel's contention that the provision is unconstitutionally vague. Id. at 1355; see also United States v. Kattan-Kassin, 696 F.2d 893, 895-96 (11th Cir. 1983). The felony provisions of Section 5322(b) were therefore properly applied

to Gebrayel's participation in a series of CTRA violations aggregating to in excess of $100,000.

II. Racially Motivated Investigation

Gebrayel next charges that the government violated due process in this case by engaging in a racially biased investigation. He argues that his conviction should be reversed as a result of this "outrageous" conduct. Allegations of government misconduct that contravenes due process are reviewed de novo. United States v. Wylie, 625 F.2d 1371, 1378 (9th Cir. 1980), cert. denied, 449 U.S. 1080 (1981).

The government has broad prosecutorial discretion, but the decision whether or not to prosecute may not be based on an "unjustifiable standard such as race, religion, or other arbitrary classifica-

tion." Wayte v. United States, 105 S. Ct. 1524, 1531 (1985) (citations omitted). In this circuit, a charge of selective prosecution requires a showing by the defendant that (1) others similarly situated generally have not been prosecuted for similar conduct and (2) the selection was based on an impermissible ground such as race, religion or exercise of first amendment free speech rights. United States v. Arias, 575 F.2d 253, 255 (9th Cir.), cert. denied, 439 U.S. 868 (1978).

Gebrayel made no such showing. His charge is a bare assertion without any specific factual allegations beyond the facts that Acosta and Rodriguez are both of Latin ancestry; that the Bank catered to foreign in particular Latin American, customers; and that Gebrayel is of Lebanese ancestry. As the burden clearly

rests with Gebrayel to show selective prosecution, his claim must fail.

III. Entrapment

Gebrayel next argues that he was entitled to a jury instruction on entrapment. We review a judge's decision to deny an entrapment instruction for abuse of discretion. United States v. Fleishman, 684 F.2d 1329, 1342 (9th Cir.), cert. denied, 459 U.S. 1044 (1982).

The primary issue in entrapment is the defendant's predisposition to commit the crime. E.g., Hampton v. Unitd States, 425 U.S. 484, 490 (1976). Although we have identified several factors that should be considered when determining predisposition, see United States v. Diggs, 649 F.2d 731, 739 (9th Cir.), cert. denied, 454 U.S. 970 (1981), a defendant's reluctance to engage in the

criminal activity has been deemed the most important factor. United States v. So, 755 F.2d 1350, 1354 (9th Cir. 1985).

Gebrayel made the first suggestion of illegal conduct, and he showed no reluctance to involve himself in the conspiracy. It is true that Agent Berry brought the funds to the Bank and asked to deposit them secretly. But Berry neither suggested any specific criminal acts nor induced Gebrayel to engage in illegal conduct. The mere fact that the government or its agents afford the opportunities or facilities for the commission of a crime does not defeat the prosecution. United States v. Marcello, 731 F.2d 1354, 1357 (9th Cir. 1984); see also Sorrells v. United States, 287 U.S. 435, 441 (1932).

A defendant must put forward sufficient facts to raise a jury issue on

entrapment before an instruction is required. United States v. Shapiro, 669 F.2d 593, 598 (9th Cir. 1982). The trial court asked counsel for both Acosta and Gebrayel to produce some evidence that would justify an entrapment instruction, and they pointed to almost none.[3] "Although only slight evidence is needed to . . . get the defense to the jury,

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3 Defendants noted only two facts: (1) that the crime could not have occurred without Agent Berry bringing the money to the Bank and (2) that Berry first told Acosta he was American and then changed his story and said he had dual citizenship and a Mexican passport when Acosta was considering how to set up a secret account for Berry. R.T. 866-68. The first fact is clearly insufficient. The second fact supposedly showed that, when Berry noted Acosta's resistance to completing the crime, Berry immediately altered his story to facilitate completion of the crime. We find no such "resistance" to have been demonstrated, particularly on Gebrayel's part. We conclude that this second fact is insufficient to raise a jury issue on entrapment.

this evidence must at least suggest that the defendant was initially unwilling to commit the crime, or that Government involvement planted the criminal design in the defendant's mind." Fleishman, 684 F.2d at 1342. We conclude that the evidence was insufficient to raise the entrapment issue. The trial court did not abuse its discretion in refusing the instruction.

IV. References to Laundering of Funds

During his opening statement, the prosecutor referred five times to Gebrayel's acts as "money laundering." In his summation, the prosecutor used the term once more. Gebrayel contends that this characterization was so improper and prejudicial that his conviction should

now be reversed for plain error under Fed. R. Crim. P. 52(b).[4]

The plain error standard is a very high threshold. In United States v. Young, 105 S. Ct. 1038 (1985), the Supreme Court stressed the sparing use of the plain error doctrine to correct only "'particularly egregious errors'" that "'seriously affect the fairness, integrity or public reputation of judicial proceedings.'" Id. at 1046-47 (quoting United States v. Frady, 456 U.S. 152, 163 (1982) and United States v. Atkinson, 297 U.S. 157, 160 (1936)). The Court made

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4 Although Acosta objected to the remarks in the government's opening statement, Gebrayel apparently did not. There was no objection to the reference during closing argument. Thus, we review now only for plain error. United States v. Kennedy, 714 F.2d 968, 976 (9th Cir. 1983), cert. denied, 465 U.S. 1034 (1984).

clear that, standing alone, inappropriate comments by a prosecutor would not justify a reviewing court in reversing a criminal conviction obtained in an otherwise fair proceeding. Any immoderate comments must be examined within the context of the entire trial to determine whether they constituted prejudicial error. Id. at 1045.

The references complained of here do not satisfy the plain error standard. Contrary to implications in Gebrayel's brief, the prosecutor's comments did not refer to a connection with narcotics or other illicit activities. The words "money laundering" were apparently used six times during eight days of trial.[5]

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5 Although money laundering may further criminal enterprises, recent decisions of this court make clear that money laundering is not, in and of itself, a crime. See United States v. Dela Espriella, 781 F.2d 1432, 1435 (9th Cir. 1986); United

Indeed, the government persuasively argues that the remarks did not constitute error at all and were instead a fair characterization of Gebrayel's activities.

V. Sufficiency of the Evidence

Gebrayel attacks the sufficiency of the evidence on three fronts. To succeed, he must show that, when the evidence is viewed in the light most favorable to the government, no rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319 (1979).

States v. Varbel, 780 F.2d 758, 761-63 (9th Cir. 1986).

A. Conspiracy

First, Gebrayel contends that there was insufficient evidence to convict him of conspiracy because there was no possible coconspirator.[6] The government asserts the Rodriguez was the other party to the conspiracy. Gebrayel disagrees, pointing to Rodriguez's withdrawn guilty plea and the government's subsequent failure to prosecute him on misdemeanor charges.

The plea withdrawal does not affect Gebrayel's conspiracy conviction. We have held that a conspiracy conviction

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6 Gebrayel apparently concedes that, if a second party to the conspiracy legally existed, there was sufficient evidence to sustain the conviction. If, however, Gebrayel is making a separate sufficiency challenge, it fails. The government refers to various examples of incriminating evidence against Gebrayel, and he makes no specific challenge to any of it. The evidence was sufficient.

does not depend on conviction of coconspirators so long as the guilty verdict is not inherently inconsistent, as where all but one of the alleged coconspirators are acquitted at the same trial. See United States v. Wright, 742 F.2d 1215, 1224 (9th Cir. 1984); United States v. Sangmeister, 685 F.2d 1124, 1126-27 (9th Cir. 1982).

In Sangmeister, we upheld a conspiracy conviction where there was sufficient evidence of an agreement to accomplish an illegal objective even though the jury deadlocked in the alleged coconspirator. We noted that conspiracy convictions may stand if the coconspirator is acquitted in a separate trial or if the coconspirator is immune from prosecution. Further, the government has discretion to prosecute only one member of the conspiracy; a conviction may stand even if the govern-

ment drops charges against all other alleged coconspirators. 685 F.2d at 1127. The fact that Rodriguez later withdrew his guilty plea and was not prosecuted further does not disable him as a coconspirator.

B. Intent

Next, Gebrayel contends that there was insufficient evidence of a willful intent to violate CTRA reporting requirements. First, he asserts that the regulations do not clearly apply to deposits made in the form of repurchase agreements such as those involved in several of the transactions here.[7] He argues that, because 31

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7 Repurchase agreements are in essence short-term loans from one financial institutional to another. The lender (depositor) buys a bond for immediate delivery from the borrower institution and agrees to sell the security back at a specified time, when the borrower's need for immediate cash has passed. Repur-

C.F.R. § 103.22(a) does not specifically include repurchase agreements within its scope, he had a bona fide, reasonable belief that he was not obligated to file CTR's for these transactions.

The clear wording of the regulation is certainly broad enough to encompass repurchase agreements.[8] Nothing indi-

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chase is at the same price paid plus interest at a specified rate. The interest rate on repurchase agreements is generally at or a few points below the prevailing market price for borrowed funds. Thus, funds invested in repurchase agreements instead of normal deposit accounts will frequently earn more interest for the investor. See generally Encyclopedia of Banking and Finance 827 (8th ed. 1983) (G. Munn & F. Garcia, eds.).

8 31 C.F.R. § 103.22(a) (1984) states, in pertinent part:

Each financial institution shall file a report of each deposit, withdrawal, exchange of currency or other payment or transfer, by, through, or to such financial institution, which involves a transaction in currency of more than $10,000.

cates that Gebrayel did not or could not make his "mistake" argument to the jury. It apparently resolved the factual dispute against him. The government points to sufficient evidence in the record to support an inference that Gebrayel knowingly violated the regulations.

C. **Designation of a CTR Form**

Finally, Gebrayel argues that the government never proved that any CTR form had been designated by the Secretary of the Treasury, as required under 31 C.F.R. § 103.22. Because of this failure of proof, he feels his conviction must be reversed. We reject this argument.

Gebrayel points to no authority for his proposition. Cases discussing the elements of CTRA violations have never mentioned a need to prove form designation. See, e.g., United States v. Dickinson, 706 F.2d 88, 91-92 (2nd Cir.

1983); United States v. Beusch, 596 F.2d 871, 878-79 (9th Cir. 1979). Further, 31 C.F.R. § 103.25 makes clear reference to the existence of appropriate reporting forms and their source.

The evidence showed that Gebrayel has seen several Forms 4789, had read them, knew of the filing requirements (which are printed on the reverse side of the form), and ignored them. Finally, it does not appear that Gebrayel otherwise made any attempt to comply with the filing requirements.

VI. Denial of the New Trial

Gebrayel contends that government attorney Donald Campbell and Rodriguez had agreed well before trial that the government would support Rodriguez's later motion to withdraw his guilty plea and that this information was improperly

withheld from the defense. He contends that Rodriguez lied on the witness stand about his plea arrangement with the government. As a result, Gebrayel believes that he should receive a new trial during which a full cross-examination of Rodriguez would be possible without any perjured testimony about deals made with the government.[9]

Despite the government's denial of any hidden deal with Rodriguez,[10] the

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9 Gebrayel also believes that the government's failure to prosecute Rodriguez may invalidate Gebrayel's conspiracy conviction because it allegedly leaves the government without a coconspirator. This contention was rejected supra in Part V(A).

10 At oral argument on Rodriguez's plea withdrawal motion, Campbell indicated that he had been initially unwilling to permit Rodriguez to plead to only a misdemeanor charge because Campbell believed incorrectly that Rodriguez had violated CTRA for personal gain before joining the Bank. When he learned that

district court denied Gebrayel's new trial motion while assuming the truth of his allegations. As the government noted at oral argument, it might have been preferable for the district court to resolve the factual dispute. It did not do so, however. For purposes of this appeal, therefore, we must assume the factual validity of the charge.

The dispute here centers on the appropriate standard of harmless error. The government argues that the district court decision was proper under United States v. Bagley, 105 S. Ct. 3375

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any previous CTRA violations were the result of Rodriguez's belief that CTR's were not required on the transactions involved, Campbell testified that he changed his mind about the need to punish Rodriguez as a felon.

(1985).[11] Gebrayel believes, however, that the harmless error standard of Chapman v. California, 386 U.S. 18, 24 (1967) (harmless beyond a reasonable doubt), should control because he contends that Rodriguez perjured himself when he testified about his plea arrangement with the government and that the government made knowing use of this perjured testimony. See Bagley, 105 S. Ct. at 3382 & n. 9. The government

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11 Under Bagley, incomplete or unresponsive prosecution disclosures made in response to request under Brady v. Maryland, 373 U.S. 83 (1963), do not require automatic reversal. Instead, reversal is necessary only if the undisclosed information was material, meaning "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Bagley, 105 S.Ct. at 3384.

asserts that nothing Rodriguez said on the witness stand was untrue. Instead, the government states that Gebrayel simply failed to ask the right questions.

We need not decide which standard is appropriate here because we conclude that under either standard, the district court properly denied the new trial motion. Gebrayel does not contend that Rodriguez lied about the events that took place at the Bank. The only alleged "perjury" concerns the scope of Rodriguez's plea bargain. Rodriguez was fully cross-examined about the favorable plea bargain that was apparent at the time of Gebrayel's trial. Any testimony about a more favorable bargain would be most unlikely to influence a reasonable juror. We are convinced beyond a reasonable doubt that Gebrayel would have been unable to impeach Rodriguez seriously

even if the facts were as Gebrayel alleges. We are similarly convinced that any effect that Rodriguez's plea of guilty had on the jury's consideration of the conspiracy charge against Gebrayel would have remained the same had the alleged bargain to permit withdrawal been revealed. The error, if any, was harmless beyond a reasonable doubt.

CONCLUSION

The judgments of conviction and denial of a new trial are AFFIRMED.

C O N F I D E N T I A L

TO THE

HONORABLE ALFREDO MARQUEZ

UNITED STATES DISTRICT JUDGE

GOVERNMENT'S TRIAL MEMORANDUM

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United States Attorney
DONALD J. CAMPBELL
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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA, Plaintiff, vs. PAN AMERICAN INTERNATIONAL BANK, RAFAEL ACOSTA, GEORGE GEBRAYEL, and RICHARD RODRIGUEZ	Cr. LV 83-89, RDF GOVERNMENT'S TRIAL MEMORANDUM

The United States of America, by and through LAMOND R. MILLS, United States Attorney, and DONALD J. CAMPBELL, Attorney in Charge, Las Vegas Task Force, respectfully submits the following memorandum for the use and convenience of this Honorable Court.

I

FACTUAL STATEMENTS

Introduction

PAN AMERICAN INTERNATIONAL BANK (PAIB) opened for business in July, 1982. Prior to the Bank being established, several federal agencies received both informant and intelligence information to the effect that RAFAEL ACOSTA, the Bank's Chairman, intended to use the Bank to launder narcotics money. Accordingly, the Criminal Investigation Division of the Internal Revenue Service sought to introduce an undercover agent to the management of the Bank.

The undercover agent used for this operation was Special Agent Michael Berry. Berry's undercover role was that of Miguel Holguin, a corrupt major in the Mexican Police who was the aid to Col. German Ferriola, the liaison officer for

Mexico to the Southwest region of the United States.[1]/ Berry's cover was supported by numerous Mexican credentials obtained from the Government of Mexico through the intercession of the State Department, more specifically, Ambassador John Gavin.

1/ Paranthetically, Ferriola was in the Witness Protection Program from 1973 to 1975 due to his assistance in a narcotics investigation in New York.

(The balance of the memorandum is not reproduced.)

Filed September 19, 1984

JAMES J. BROWN, ESQUIRE
830 East Charleston Blvd.
Las Vegas, NV 89104
(704) 384-3553
Attorney for Defendant,
RICHARD RODRIGUEZ

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA, Plaintiff, vs. PAN AMERICA INTERNATIONAL BANK, RAFAEL ACOSTA, GEORGE GEBRAYEL AND RICHARD RODRIGUEZ, Defendants.	)	CR. LV-83-89, HEC

MOTION TO SET ASIDE JUDGMENT OF CONVICTION AND WITHDRAW PLEA OF GUILTY

COMES NOW, the Defendant, RICHARD RODRIGUEZ, and moves the Court pursuant to Federal Rules of Criminal Procedure, Rule 32(d), to set aside his judgment of conviction entered on the 21st of November, 1983, and permit him to withdraw his plea of guilty, to correct a manifest injustice.

Movant will rely upon the records, documents and pleadings on file herein, the Affidavit of JAMES J. BROWN attached hereto and such evidence and arguments as may be adduced at the hearing held hereon, if any.

JAMES J. BROWN, ESQUIRE
830 E. Charleston Blvd.
Las Vegas, NV 89104
Attorney for RICHARD RODRIGUEZ

MEMORANDUM OF AUTHORITIES

The Federal Rules of Criminal Procedure, Rule 32(d) provides:

> (d) Withdrawal of Plea of Guilty. A Motion to Withraw a plea of guilty or nolo contendere may be made only before sentence is imposed or imposition of sentence is suspended; but to correct manifest injustice the Court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his plea."

In the instant action the prosecutor was under a mistaken understanding of the facts of Defendant, RICHARD RODRIGUEZ's involvement in the criminal acts and his culpability. It was solely upon this mistake of fact that the prosecutor refused to negotiate to allow the Defendant to plead to an offense resulting in less than a felony conviction. cf. United States vs. Myers, (C.A. 3rd 1967), 374 F.2d 707, where the sentencing judge had misread the Defendant's criminal record and sentenced him believing he had three prior convictions. Also, see,

United States vs. Weston, (C.A. 9th 1971) 448 F.2d 626.

To require the Defendant, a 28 year man to suffer the penalties imposed by a felony conviction where but for a mistake of fact he would not have such permanent penalty, is a manifest injustice requiring correction by the Court.

This Court is given broad discretion in allowing Defendant relief under F.R.Cr.P. 32(d) and greater leeway than that given under Title 28 Section 2255. United States vs. Kent, (C.A. 7 1968) 397 F.2d 446, cert. den. 89 S.Ct. 860; United States vs. Tivis, (D.C. Tex. 1969), 302 F. Supp. 581, Aff. 421 F.2d 147; Sims vs. United States, (D.C. Md. 1966), 272 F. Supp. 577, Aff. 382 F.2d 294, cert. den. 88 S.Ct. 1062, allows the Court to permit withdrawal of plea even though the guilty plea was voluntary and the Defendant was afforded due process.

The Defendant in seeking to withdraw his guilty plea is not seeking a trial upon the merits rather only be allowed to enter a guilty plea whereby he will not suffer from a felony conviction.

DATED this 17th day of September, 1984.

JAMES J. BROWN, ESQUIRE
830 E. Charleston Blvd.
Las Vegas, NV 89104
Attorney for RICHARD RODRIGUEZ

AFFIDAVIT OF JAMES J. BROWN

STATE OF NEVADA)
)
COUNTY OF CLARK)

JAMES J. BROWN, being first duly sworn upon his oath, deposes and says:

That your Affiant is an attorney duly admitted to practice before the United States District Court for the District of Nevada.

That your Affiant became attorney of record for the Defendant on September 27, 1983, after Defendant's previous counsel, JOSEPH W. HOUSTON, II, moved to withdraw as counsel.

That at the time Affiant became counsel for the Defendant, the Defendant had entered a plea of guilty to Count I of the indictment charging him with conspiracy in violation of Title 18, Section 371 of the United States Code pursuant to a written plea negotiation

agreement pursuant to Federal Rules of Criminal Procedure 11. That as part of the plea negotiation agreement, the Defendant, RICHARD RODRIGUEZ, agreed to cooperate with the United States Government in the investigation of the Co-Defendants together with testifying at the trial of the Co-Defendants. That the Defendant fully cooperated and performed as agreed.

That your Affiant was advised by DONALD CAMPBELL, Assistant United States Attorney, in charge of the prosecution of the Defendant and Co-Defendants that during the preparation of the trial of the Co-Defendants was the first time he became aware the Defendant, RICHARD RODRIGUEZ had not been involved in the activity on prior occasions which was the subject of the criminal charge. Specifically, your Affiant was advised by DONALD

CAMPBELL that he believed at the time he discussed plea negotiations with JOSEPH W. HOUSTON, II, the Defendant, RICHARD RODRIGUEZ, had failed to file currency transaction reports on prior occasions for personal gain by receiving compensation from customers for not filing such currency transaction reports, as required by Title 81 of the United States Code, Sections 5313, 5322.

Your Affiant was advised by DONALD CAMPBELL that he specifically told Defendant's counsel, JOSEPH W. HOUSTON, II, that that was the reason he would not allow the Defendant to plead to an offense less than a felony. That DONALD CAMPBELL told your Affiant he was not advised by JOSEPH W. HOUSTON, II, that the Defendant, RICHARD RODRIGUEZ had not committed the offense for personal gain on prior occasions and therefore did

believe such fact to be the case until learning to the contrary during the preparation for the trial of the Co-Defendants.

That your Affiant has been advised by DONALD CAMPBELL that had he been aware of the true facts, he would not have compelled the Defendant to plead to a felony as a part of the negotiation and would have permitted the Defendant to enter a plea for deferred sentence.

That your Affiant does believe that a manifest injustice has occurred to the Defendant in the instant case and the Court should set aside his conviction, allow him to withdraw his plea and enter a plea of guilty whereby he does not suffer from a felony conviction.

Further your Affiant sayeth not.

JAMES J. BROWN

Subscribed and Sworn to before me

this 17th day of September, 1984.

NOTARY PUBLIC

(SEAL)
MARY ANN P. BURG
Notary Public-State of Nevada
Clark County
My Appointment Expires September 26, 1987

RECEIPT OF A COPY of the foregoing MOTION TO SET ASIDE JUDGMENT OF CONVICTION AND WITHDRAW PLEA OF GUILTY is hereby acknowledge this 18 day of September, 1984.

UNITED STATES ATTORNEY

_____

DONALD CAMPBELL,
Attorney-in-Charge,
Las Vegas Task Force
300 Las Vegas Blvd., South
Las Vegas, NV 89101

LAMOND R. MILLS
United States Attorney
DONALD J. CAMPBELL
Attorney in Charge
Las Vegas Task Force
300 So. Fourth Street #1005
Las Vegas, Nevada 89101
(702) 388-6363

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA Plaintiff, vs. PAN AMERICAN INTERNATIONAL BANK, Et al., Defendants.	Cr. LV 83-89 HEC GOVERNMENT'S RESONSE TO DEFENDANT RICHARD RODRIGUEZ'S MOTION TO SET ASIDE JUDGMENT OF CONVICTION AND WITHDRAW OF PLEA OF GUILTY

COMES NOW the United States of America, by and through LAMOND R. MILLS, United States Attorney, and DONALD J. CAMPBELL, Attorney in Charge, Las Vegas Task Force, and with regard to the above-

captioned motion files the following response:

It is the position of the Government that a full and adequate response to Defendant RICHARD RODRIGUEZ's Motion to Set Aside Judgment of Conviction and Withdrawal of Plea of Guilty, can not be formulated without a hearing to ascertain the circumstances surrounding Mr. Rodriguez's entry of plea. It is immediately apparent that in such hearing Mr. Rodriguez's attorney, Mr. Brown, intends to call the undersigned as a witness in an effort to elicit certain testimony in support of his client's claim for relief. Accordingly, it is respectfully suggested that a time certain be set for a hearing of this matter for the purpose of enabling both the Government and counsel for Mr. Rodriguez to subpoena the necessary witnesses in order to present a clear

picture of the foundation upon which Mr. Rodriguez's motion rests.

DATED this 5th day of October, 1984.

Respectfully su;bmitted,

LAMOND R. MILLS
United States Attorney

DONALD J. CAMPBELL
Attorney in Charge
Las Vegas Task Force

LAMOND R. MILLS
United States Attorney
DONALD J. CAMPBELL
Attorney in Charge
Las Vegas Task Force
300 So. Fourth Street #1005
Las Vegas, Nevada 89101
(702) 388-6363

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA Plaintiff, vs. PAN AMERICAN INTERNATIONAL BANK, Et al., Defendants.	Cr. LV 83-89 HEC GOVERNMENT'S RESONSE TO DEFENDANT RICHARD RODRIGUEZ'S MOTION TO SET ASIDE JUDGMENT OF CONVICTION AND WITHDRAW OF PLEA OF GUILTY

I, Robin Skone-Palmer, certify that I am an employee of the United States Attorney's Office and a person of such age and discretion as to be able to serve papers.

On October 5, 1984, I served a copy of the above-captioned motion on James J. Brown, Esquire, attorney for Richard Rodriguez, by placing said motion in a post-paid envelope address to him at 830 East Charlest (sic) Blvd., Las Veas, (sic) NV 89104, which is his last known address, and by placing said envelope in the United States mail.

Robin Skone-Palmer

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

-oOo-

UNITED STATES OF AMERICA	)	
vs.	)	Case No. 83-0166M
PREMISES OF PAN AMERICAN INTERNATIONAL BANK, 1901 SOUTH DECATUR BOULEVARD, LAS VEGAS, COUNTY OF CLARK, STATE OF NEVADA.	)	SEARCH WARRANT

TO: ANY SPECIAL AGENT OF THE INTERNAL REVENUE SERVICE

Affidavit having been made before me by Larry C. Halper, Special Agent, Inter-

nal Revenue Service, Criminal Investigation Division, Las Vegas, Nevada, that he has reason to believe that on the PREMISES OF PAN AMERICAN INTERNATIONAL BANK, 1901 SOUTH DECATUR BOULEVARD, LAS VEGAS, COUNTY OF CLARK, STATE OF NEVADA, more specifically described as being situated on the eastern side of Decatur with the main entrance facing west. The bank is a one-story building which appears to be constructed of wood and metal materials. The bank is brown in color. The front entrance consists of two plate glass doors which are bordered on either side by a ramp which leads to this main entrance area. Physically located on the right side of the front entrance is a rectangular sign reading "Pan American International Bank". Directly in front of the building is a larger neon sign, blue and white in color, which reads "Pan

American Bank" and displays the PAN AMERICAN INTERNATIONAL BANK logo which is a "P" interceted by the letters "A" and "B"; there is now being concealed therein certain property, namely,

(a) All records pertaining to the accounts of Marion Fernandez, Emma Wulze, Shief (sic) F. Amhaz, Bart Sloan, Carlos Sama, Carlos Soto, and Partout Distributing company, including signature cards, statements of account, deposit slips, withdrawl (sic) tickets, checks, loan records, wire transfer records, foreign citizen declaration cards, and/or correspondence relating to those accounts.

(b) Those files containing each and every Currency Transaction Report maintained by the PAN AMERICAN INTERNATIONAL BANK since the date of its opening

July 19, 1982, up to and including the present date.

(c) Internal Revenue Service letter from Anders Flodin to PAN AMERICAN INTERNATIONAL BANK regarding the filing of Currency Transaction Reports.

(d) The entire file containing each and every repurchase agreement, chart of repurchase agreements and chart of accounts for repurchase agreements contained in the desk of Marta L. Lovinger located in the interior of PAN AMERICAN INTERNATIONAL BANK.

(e) The stockholder proxy file located in the filing cabinet in the executive office containing documents supporting transfer of two thousand five hundred (2,500) shares of stock in PAN AMERICAN INTERNATIONAL BANK to Jose Garcia. (As this Court is well aware, the earlier search warrant commanded the

executing agents to seize similar type evidence relating to the false and fictitious person of Jose Garcia and it is simply out of an abundance of caution that such records relating to the transaction involving that person are once again named and sought in this warrant.)

(f) A .357 magnum handgun found by agents during the course of the earlier search bearing Serial Number E72876, and which has been determined to be an unregistered weapon, which are the evidence of a crime of one or more violations of Title 31, United States Code, Sections 5313 and 5322, Title 31, Code of Federal Regulations, Sections 103.22 and 103.25, Title 18, United States Code, Sections 371, 1001 and 2. I am satisfied that there is probable cause to believe that the afore-mentioned items are concealed on the heretofore described prem-

ises and that the foregoing grounds for application for issuance of the search warrant exist.

YOU ARE HEREBY COMMANDED to search forthwith the place named for the property specified, serving this warrant and making the search at anytime of day or night, and if the property described be found there to seize it, leaving a copy of this warrant and a receipt for the property taken, and to prepare a written inventory of the items seized and return this warrant to the undersigned United States Magistrate and Court, accompanied by the written inventory of any items taken, within ten (10) days of this date as required by law.

DATED: July 13, 1983
TIME: 11:54 p.m.

PHILIP M. PRO
United States Magistrate

AFFIDAVIT

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

J. Thomas Hampton, being first duly sworn, deposes and says:

EXPERTISE OF AFFIANT

Your affiant is the tandem case agent on the investigation involving PAN AMERICAN INTERNATIONAL BANK. Your affiant has been employed with the Internal Revenue Service for a period of nine (9) years, the last four of which have been with the Criminal Investigation Division. Your affiant is intimately familiar with financial investigations through both extensive training and experience. Similiarly, (sic) your affiant is intimately familiar with the investigation

regarding PAN AMERICAN INTERNATIONAL BANK, and accordingly, seeks to incorporate specifically herein by reference the earlier affidavit submitted to this Honorable Court for the search of PAN AMERICAN INTENATIONAL BANK, subscribed and sworn to by Larry C. Halper. Your affiant has read this affidavit in its entirety and concurs in the statements made therein. This affidavit and search warrant, earlier executed, is attached hereto as Exhibit "A".

At approximately 5:00 p.m. on this date, the earlier search warrant referenced in Paragraph 1 and attached hereto as Exhibit "A" was served upon the PAN AMERICAN INTERNATIONAL BANK. During the course of that search numerous articles described in the serach (sic) warrant were indeed found to be present in the bank. MR. RICHARD RODRIGUEZ, who was

earlier indicted by the Federal Grand Jury for a violations of Title 18, United States Code, Sections 371 and 1001 and Title 31, United States Code, Section 5322, was arrested. After having been fully advised of his rights as per the Miranda decision of the United States Supreme Court, and having agreed to waive those rights both orally and in writing, RICHARD RODRIGUEZ agreed to extend his full cooperation to the Internal Revenue Service.

STATEMENT MADE BY RODRIGUEZ

1. MR. RICHARD RODRIGUEZ has told several agents of the Internal Revenue Service that MR. RAFAEL ACOSTA uses false names and nominee accounts as a matter of course to conceal extremely large deposits at the PAN AMERICAN INTERNATIONAL BANK for select customers. RODRIGUEZ has

also informed the agents that ACOSTA does this on his own behalf as well.

2. RODRIGUEZ agreed to accompany the agents to the PAN AMERICAN INTERNATIONAL BANK and took them to his desk where he pointed out the lower right hand drawer and revealed a file marked "Power of Attorney". In this file was documentation that on October 12, 1982, Mario Fernandez filed a Power of Attorney. RODRIGUEZ has identified Mario Fernandez as being a false and fictitious name used by ACOSTA as a nominee account for running through large sums of money without filing Currency Transaction Reports herein after referred to as CTRs. MR. RODRIGUEZ also disclosed that within this file was a Power of Attorney for Emma Wulze dated March 5, 1980, which is also a nominee account used by ACOSTA to run large sums of money through without

filing CTRs. MR. RODRIGUEZ informed agents of the Internal Revenue Service that he knows of at least one occasion where the fictitious Wulze account was used to fund an uncollectable loan to Partout Distributing Company. Also included in this Power of Attorney file is the Power of Attorney of Ali Makdad dated February 18, 1983, memorializing a conveyance of a Power of Attorney to Sheik (sic) F. Amhaz. MR. RODRIGUEZ believes that the Ali Makdad account is a nominee account as well, but he does know that Sheik (sic) Amhaz exists because he has seen Amhaz come into the PAN AMERICAN INTERNATIONAL BANK on several occasions with large sums of money for which no CTRs were filed.

3. MR. RODRIGUEZ has also informed agents of the Internal Revenue Service that CTRs were not filed in numerous

other accounts in order to conceal the deposit/withdrawl (sic) of large sums of money. Yet another of these accounts was one in the name of Bart Sloan which according to RODRIGUEZ raised the curiosity of Bank examiners to the point where the PAN AMERICAN INTERNATIONAL BANK felt it necessary to file late CTRs in order to conceal their earlier omissions.

4. RODRIGUEZ has further identified yet another false and fictitious account under the name of Carlos Sama which conceals RODRIGUEZ has informed agents of the Internal Revenue Service that the Sama account has been used in the past to reflect non-existent transfers to the person of Miguel Pulido. The Sama account has also been identified as one of those accounts for which no CTRs were filed.

5. RODRIGUEZ has also informed agents of the Internal Revenue Service, during the course of conversations with them, that the PAN AMERICAN INTENATIONAL BANK received a letter from Anders Flodin, Internal Revenue Service, setting forth, in full, the reporting requirements involving currency transactions. RODRIGUEZ advised the agents that this letter is still intact in the general CTR file.

6. MR. RODRIGUEZ went on to state that located in the desk of Marta L. Lovinger, Account Clerk for PAN AMERICAN INTERNATIONAL BANK is located a file containing the 1982 and 1983 repurchase agreements, a chart of these repurchase agreements and a list of corresponding accounts for these repurchase agreements. RODRIGUEZ has stated that the bank has used numerous repurchase agreements to

conceal the flow of deposits and withdrawls (sic) from accounts. More specifically, numerous repurchase agreements have listed the false and fictitious name of Jose Garcia as the principal in the transaction.

7. RODRIGUEZ has informed agents of the Internal Revenue Service that located in a file cabinet in the executive office of PAN AMERICAN INTERNATIONAL BANK is a blue file folder containing the Sheik (sic) F. Amahaz file which was earlier referred to as an account which has received significantly large deposits without the requisite filing of CTRs. Also located in that file cabinet is a stockholder proxy file which reflects two thousand five hundred (2,500) shares of PAN AMERICAN INTERNATIONAL BANK being issued to the false and fictitious person of Jose Garcia.

STATEMENT OF KEN TEMPLETON

1. Your affiant respectfully informs this Honorable Court that agents of the Internal Revenue Service have interviewed Mr. Ken Templeton, who is an investor in and director of PAN AMERICAN INTERNATIONAL BANK.

2. Mr. Templeton has told agents of the Internal Revenue Service that he has been informed by numerous bank employees that something "funny" has been going on at the bank for quite sometime (sic) and that the accounts of Jose Garcia, Emma Wulze and Partout Distributing Company have been used in a manner not consistent with generally accepted accounting principals and bank procedures.

3. Mr. Templeton went on to relate that questionable transactions involving these accounts motivated him to contact State Banking Examiners. These banking

examiners found numerous discrepancies and curious omissions, but according to Templeton, did not result in a closing of the bank. Templeton stated that because he called the bank examiners ACOSTA became extremely disgruntled thereaftrer adopting a hostile attitude towards Templeton when he voiced these objections.

4. Mr. Templeton has informed agents of the Internal Revenue Service that a large stack of new account applications may be found in the credenza belonging to Marta Lovinger. Mr. Templeton states that none of these new account applications contain social security numbers, which is high unusual in that banking institutions require this information to be supplied as to all domestic accounts.

STATEMENT OF YVONNE SABLICH

1. Your affiant informs this Honorable Court that special agents of the Internal Revenue Service have on this date interviewed Yvonne Sablich, the former Public Relations and New Accounts Executive of PAN AMERICAN INTERNATIONAL BANK. Ms. Sablich states that the Emma Wulze account did in fact experience significantly large deposits of cash for which no CTRs were initially filed but believed to have been alter drafted but not submitted.

CONCLUSION

1. Wherefore, your affiant would respectfully suggest that there exists an abundance of evidence which indicates PAN AMERICAN INTERNATIONAL BANK, its Chairman, its Vice-Chairman, Cashier, and other employees have been involved in a

continuing and on-going scheme to disguise and conceal large deposits of currency without the requisite filing of CTRs. Moreover, there exists overwhelmng evidence to suggest that RAFAEL ACOSTA and GEORGE GEBRAYEL have used nominee accounts to accomplish concealment of such transactions for both themselves and select customers, in violation of Title 18, United States Code, Sections 371 and 1001 and Title 31, United States Code, Sections 5313 and 5322, and the regulations thereunder.

2. Accordingly, your affiant respecfully requests this Honorable Court to issue and additional search warant (sic) for the premises of PAN AMERICAN INTERNATIONAL BANK for the purpose of searching for and seizing the following items:

(a) All records pertaining to the accounts of Mario Fernandez, Emma Wulze, Shief (sic) F. Amhaz, Bart Sloan, Carlos Sama, Carlos Soto, and Partout Distributing Company, including signature cards, statements of account, deposit slips, withdrawl (sic) tickets, checks, loan records, wire transfer records, foreign citizen declaration cards, and/or correspondence relating to those accounts.

(b) Those files containing each and every Currency Transaction Report maintained by the PAN AMERICAN INTERNATIONAL BANK since the date of its opening July 19, 1982, up to and including the present date.

(c) Internal Revenue Service letter from Anders Flodin to PAN AMERICAN INTERNATIONAL BANK regarding the filing of Currency Transaction Reports.

(d) The entire file containing each and every repurchase agreement, chart of repurchase agreements and chart of accounts for repurchase agreements contained in the desk of Marta L. Lovinger located in the interior of PAN AMERICAN INTERNATIONAL BANK.

(e) The stockholder proxy file located in the filing cabinet in the executive office containing documents supporting transfer of two thousand five hundred (2,500) shares of stock in PAN AMERICAN INTERNATIONAL BANK to Jose Garcia. (As this Court is well aware, the earlier search warrant commanded the executing agents to seize similar type evidence relating to the false and fictitious person of Jose Garcia and it is simply out of an abundance of caution that such records relating to the transaction involving that person are once

again named and sought in this warrant.)

3. Your affiant would also respectfully request that agents of the Internal Revenue Service be allowed to seize a .357 magnum handgun found by agents during the course of the earlier search bearing Serial Number E72876, and which has been determined to be an unregistered weapon. While this weapon does not hold any independent significance to the instant investigation, its seizure is sought because it is contraband and evidence of a violation of State law.

4. Your affiant informs the Court that at the time of the dictation of this affidavit agents of the Internal Revenue Service are continuing their search of the PAN AMERICAN INTERNATIONAL BANK under

the authorization of the earlier warrant attached hereto.

J. THOMAS HAMPTON
Special Agent
Internal Revenue Service

SUBSCRIBED and SWORN to before me this 13th day of July, 1983.

PHILIP M. PRO
United States Magistrate

Filed June 22, 1984
Carol , Deputy

FRANK J. CREMEN, ESQ.
302 East Carson Avenue, #1004
Las Vegas, Nevada 89101
Attorney for Defendant,
GEORGE GEBRAYEL

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

-o0o-

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	CR. LV-83-89, RDF
vs.	)	
GEORGE GEBRAYEL, RAFAEL ACOSTA, et al.,	)	
Defendants.	)	

MOTION TO SUPPRESS

COMES NOW, the Defendants, GEORGE GEBRAYEL and RAFAEL ACOSTA, by and

through their attorneys, FRANK J. CREMEN and OSCAR GOODMAN, who ask this Court for an Order suppressing all evidence the government obtained as a result of a search warrant issued by the Honorable M. Pro on July 13, 1983 at 11:54 p.m.

This moton is predicated on the attached Points and Authorities and all pleadings and papers on file herein. It is here alleged that the Affidavit of J. Thomas Hampton, upon which the warrant is question was issued, was made in bad faith or in reckless disregard for the truth.

DATED this 22nd day of June, 1984.

FRANK J. CREMEN, ESQ.
302 East Carson Avenue,
#1004
Las Vegas, Nevada 89101

POINTS AND AUTHORITIES

The search warrant in question and the affidavit upon which it was issued, are attached hereto as Exhibits "A" and "B," respectively. This warrant was issued after the Government had already served and executed an earlier warrant at the Pan American International Bank, 1901 South Decatur Boulevard in Las Vegas, Nevada. At the time that the earlier warrant was executed, Richard Rodriguez, a bank cashier and a named defendant who has since pleaded guilty, was arrested. Afterwards, Rodriguez evidently spoke to Government officers, including J. Thomas Hampton. In his Affidavit application for the second warrant, Hampton devotes seven paragraphs to the statements that Richard Rodriguez allegedly made to Government agents after his arrest. Within the past two weeks, the Government

has provided to defense counsel, transcripts of recorded statements taken by Government agents of Richard Rodriguez on July 19, 1983. The transcript of the July 19th Rodriguez interview covers the same subjects that are covered in Hampton's Affidavit in support of this warrant. The transcript of this July 19, 1983 interview of Richard Rodriguez directly contradicts Hampton's Affidavit in every substative (sic) regard. See attached Exhibit "C".

Examining that section of the Hampton Affidavit concerning the Government's conversations with Richard Rodriguez, in the first paragraph Hampton states that Rodriguez related that the Defendant, RAFAEL ACOSTA, uses "false names and nominee accounts as a matter of course to conceal extremely large deposits. . . ." Hampton, here, clearly implies tht the

deposits in question are of cash, for afterall, cash deposits were and are the subject of the investigation and prosecution in this case. In fact, Rodriguez states on pages 43, and 44 of his July 19 statement, that the deposits were in check form. At page 44 he states that there were no cash deposits to his knowledge.

In Paragraph 2 of the Rodriguez section of his Affidavit, Hampton relates that Rodriguez told them that ACOSTA used a "fictitious account in the name of Mario Fernandez, to run through large sums of money without filing currency transaction reports." In fact, Rodriguez states at page 26 of his July 19 statement, that Fernandez is a person whom he has never seen and that the signature card, or a signature that is similar to RAFAEL ACOSTA'S. He did not state that

the account was false or fictitious. Nor does he ever state anywhere in the entire transcript of the July 19 meeting that ACOSTA ran cash through this or any account. In fact, at page 38 of his transcript, Rodriguez states that the only large sums of cash he can recall ever having been brought to the bank were those of the Government Agent, Michael Berry, in the instant case.

Hampton also states in paragraph 2 of the Rodriguez section of his Affidavit, that ACOSTA told him that GEORGE GEBRAYEL ran through large sums of cash through an account in the name of Emma Wulze, without filing a CTR. In fact, Rodriguez states at page 17 of his July 19 statement, that part of the proceeds of a loan to Partout Distributing Company, had been placed by GEBRAYEL In (sic) the Wulze account. Never does he state that those

proceeds are in the form of cash and that a CTR was not filed. In fact, his statement at page 38 of his transcript, belies such an allegation.

His statement at page 38 of the July 19 statement also belies the allegation made by Hampton in paragraph 2 of the Rodriguez section of his Affidavit that an account in the name Shiek Amahaz, was used by the Defendants to run through large sums of cash without CTR's. In fact, Rodriguez never made such a statement.

In paragraph III of the Rodriguez section of his Affidavit, Hampton states that Rodriguez told them that CTR's were not filed in numerous other accounts in order to conceal the deposit and withdrawal of large sums of money. One can read the entire July 19 statement of Richard Rodriguez and nowhere is such an

allegation contained. As page 56 of the Rodriguez, July 19 statement, there is the only possible passage that could possibly relate to such an allegation. It is here stated in full:

RODRIGUEZ: Dick Kruger brought over - he was the General Manager of (unintelligible) West and when the FDIC was auditing us, they was a couple of transactions that he had done that were not reported and once we found out that they weren't reported we went ahead and made up the currency transaction reports and filed them.

HALPER: Apparently just an oversight. . .

In paragraph 4 of the Hampton Affidavit, Hampton states that Rodriguez told Government Agents that Carlos Soto, under the fictitious name of Carlos Sama, used his Sama account to reflect non-existent transfers to the person of Miguel Pulido"

and that the Sama account was one of which no CTR's were filed. In fact, Rodriguez told them at page 12 and 27 of is July 19 statement, that Carlos Soto and Carlos Sama were the same person. (As this Court may or may not know, people of Spanish ancestry often have multiple sir names which, in this country, are often used interchangably.) Rodriguez states that all that Soto, aka Sama, did, was cash a cashiers check in the amount of seventeen or eighteen thousand dollars, that he had purchased in the name of Miguel Pulido, as was his right to do.

In paragraph 6 of his Rodriguez section of his Affidavit, Hampton states that Rodriguez told him that the bank has used numerous repurchase agreements to "conceal the flow of deposits and withdrawals from accounts." In fact, other

than for the transactions for which this prosecution is brought, Rodriguez never made such a statement.

In paragraph 7 of his Rodriguez section of his Affidavit, Hampton indicates that Rodriguez told Government Agents that Shiek F. Amahaz, has "received significantly large deposits without the records of filing CPR'S." In fact, at page 14 of the July 19 statement, Rodriguez states that he "can't recall if there was ever a large transaction for him."

It is interesting to note that not once in this July 19, 1983 conversation that Agents Hampton and Halper have with Rodriguez, do they challenge a single statement that he makes as contradictory of earlier statements that he may have given them. So numerous are the contradictions in the Hampton Affidavit and the

Rodriguez July 19 statement, and so substantive are those contradictions in nature, that one cannot escape the conclusion that Hampton either recklessly disregarded the truth or acted in bad faith. Perhaps it was his zeal for his job that motivated him, but the conclusion is inescapable that he acted improperly.

The contradictions continue in the Affidavit beyond those of Richard Rodriguez, for he also states that Yvonne Sablich told him that the Emma Wulze account "did in fact experience significantly large deposits of cash for which no CTR's were initially filed, but believed to have been late drafted but not submitted." On July 20, 1983, Agents Hampton and Halper also recorded a statement with her, which the Government has recently provided to the defense in this

matter. In this statement, nowhere does Sablich make such a statement.*

In Franks v. Delaware, 438 US 154, 98 S.Ct. Rptr. 2674 (1978), the Supreme Court held that when it is shown that a search warrant rests substantially upon a false affidavit made in bad faith on reckless disregard for the truth, the warrant must be voided. In this regard, the Supreme Court states as follows:

> "There is, of course, a presumption of validity with respect to the affidavit supporting the search warrant. To mandate an evidentiary hearing, the challenger's attack must be more than conclusory and must be supported by more than a mere desire to cross-examine. There must be allegations of deliberate falsehood or of reckless disregard for the truth, and those allegations must be accompanied by an offer of proof. They should point out specifically the portion of the warrant affidavit that is claimed to be false; and they should be accompanied by a statement of supporting reasons. Affidavits or sworn or otherwise reliable statements of witnesses should be furnished, or their absence satisfactorily explained. Allegations of negli-

> gence or innocent mistake are insufficient. The deliberate falsity or reckless disregard whose impeachment is permitted today is only that of the affiant, not of any nongovernmental informant. Finally, if these requirements are met, and if, when material that is the subject of the alleged falsity or reckless disregard is set to one side, there remains sufficient content in the warrant affidavit to support a finding of probable cause, no hearing is required. On the other hand, if the remaining content is insufficient, the defendant is entitled, under the Fourth and Fourteenth Amendments, to his hearing." Id, 908 S.Ct. 2684.

It is submitted that the attack that the Defendants here make upon the Affidavit of Mr. Hampton, meets in every regard, the requirements established by the Supreme Court to warrant an evidentiary hearing. The only portion of Hampton's Affidavit shown not to be false, is that section concerning the statements of Ken Templeton, non (sic) of which concern a violation of any State or Federal law, but rather are devoted to

"unusual banking occurrences." The warrant simply cannot stand on that section of the Hampton Affidavit concerning the statements of Ken Templeton. And mere negligence cannot be an explanation for the wildly divergent and contradictory statements contained in Hampton Affidavit and the Yvone (sic) Sablich and Richard Rodriguez statements of July 19 and 20, respectively.

Dated this 22 day of of June, 1984.

FRANK J. CREMEN, ESQ.
302 East Carson Avenue,
#1004
Las Vegas, Nevada 89101

* In fact, the one transaction concerning the account that she mentions, she states involved the deposit of a check.

RECEIPT TO COPY

RECEIPT OF A COPY of the foregoing MOTION TO SUPPRESS is hereby acknowledged this 22 day of June, 1984.

LAMOND R. MILLS
United States Attorney

DONALD J. CAMPBELL
Attorney-in-Charge

GOODMAN, TERRY, STEIN
& QUINTANA

OSCAR B. GOODMAN, ESQ.
Attorney for Defendant, ACOSTA

RECEIPT TO COPY

RECEIPT OF A COPY of the foregoing MOTION FOR NEW TRIAL is hereby acknowledged this 13th day of July, 1984.

U.S. ATTORNEYS OFFICE

_____
DON CAMPBELL
Las Vegas Task Force

Filed July 13, 1984
Carol , Deputy

FRANK J. CREMEN, ESQ.
302 East Carson Avenue, #1004
Las Vegas, Nevada 89101

(702) 385-7475

Attorney for Defendant,
GEORGE GEBRAYEL

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	CR. LV-83-89, LDG
vs.	)	
GEORGE GEBRAYEL, RAFAEL ACOSTA, et al.,	)	
Defendants.	)	

MOTION FOR NEW TRIAL

COMES NOW, GEORGE GEBRAYEL, by and through his attorney, Frank J. Cremen,

who moves this court for an Order granting to him a new trial on the indictment returned in this matter. This motion is made in the alternative to the motion for judgment of acquittal filed contemporaneously with this motion. The Defendant would ask that the court consider this motion only if denies the motion for judgment of acquittal and all counts.

This motion is based on the attached points and authorities, all pleadings and papers on file herein and all evidence heard by this court. This motion is made pursuant to F.R.Cr.P. 33.

DATED this 13th day of July, 1984.

FRANK J. CREMEN, ESQ.
302 East Carson Avenue,
#1004
Las Vegas, Nevada 89101
Attorney for Defendant
GEBRAYEL

POINTS AND AUTHORITIES

This indictment was conceived in deception and born in hysteria. The government, at all stages of the prosecution, fanned a fire of falsity it commenced concerning the true nature and quality of the acts supposedly committed by each of the named Defendants. The government publically stated that the named Defendants were "laundering drug money" at the Pan American International Bank. By word and by insinuation the government, at the trial of this matter, suggested that the Defendants were running a "money laundering operation" at the Pan American International Bank.

A fundamental injustice was therefore done to GEORGE GEBRAYEL at the trial of this matter for he was required to defend not only the offenses stated in the indictment, but those stated by the

prosecutor in his opening statement and implied through him and by him throughout these proceedings.

THE GOVERNMENT'S OPENING STATEMENT WHEREIN IT WAS STATED THAT THE DEFENDANTS WERE LAUNDERING MONEY WAS MADE RECKLESSLY AND NEVER SUBSTANTIATED

Vividly demonstrating the government's abandonment of its obligation to see that justice is done, was its opening statement wherein the prosecutor alleged that GEORGE GEBRAYEL and RAFAEL ACOSTA were "laundering" money at the Pan American International Bank. That phrase clearly suggested to the jury that these men were doing something illegally sinister at the bank. Certainly that is what the government implied and the jury may well have inferred from the government's opening statement.

As this court knows, the government was able to show absolutely no benefit derived by the Defendants as a result of the alleged failure to file transaction reports. Nor was the government able to show any other incident in which GEBRAYEL and ACOSTA were involved in not filing reports. The testimony of Richard Rodriguez was to the exact opposite. There simply weren't any other such incidents. Richard Rodriguez recalled for not another incident in which large sums of small bills came into the bank. He testified that the two government agents with whom he spoke were disappointing by what they found at the bank.

Despite this disappointment and despite this evident lack of proof the government persisted in misrepresenting this case to the jury, all to the detriment of this Defendant. Indeed, the

government never ever offered any testimony as to what "laundering money" is. The connotations of that phrase as generally understood provide fertile ground for active of imaginations.

THE DEFENDANTS' MOTION TO SUPPRESS SHOULD NOT BE HEARD AND GRANTED AS THE AFFIDAVIT OF AGENT HAMPTON THEREIN REFERENCED IS FALSE IN EVERY MATERIAL RESPECT.

Nothing can better demonstrate the deceit perpetrated by the government in its prosecution of this case than the demonstrably false affidavit of Agent Hampton in support of a second search warrant on July 13, 1983. The Defendant GEBRAYEL here adopts and incorporates by reference his Motion to Suppress filed on June 22, 1984 (see Exhibit "1" attached hereto).

Much of the documentary evidence utilized by the government in this recent

trial was retained as a result of that warrant. That warrant was issued and predicated upon a patently false affidavit. It was, at a minimum, made with a reckless disregard for the truth. In Franks v. Delaware, 438 U.S. 154 98 S.Ct. Rptr. 2674 (1978), the Supreme Court made it patently clear that a warrant issued on such an affidavit must be voided. Not even last week's Supreme Court decision concerning the good faith belief of a law enforcement officer in executing a warrant can help the government in this regard. The Supreme Court left intact the ruling in Franks v. Delaware, supra. Obviously, an officer who is guilty of deception or reckless disregard for the truth in applying for a search warrant does not act in good faith.

CONCLUSION

Under F.R.Cr.P. 33, this court has the authority to grant a new tial in the interest of justice. By this application the Defendant GEBRAYEL has demonstrated that justice does require a new trial. Perhaps misguided by its zeal, the government allowed the objective of a conviction blind it to its purpose to see that justice is done. The prosecution overstated, over-embellished and over dramatized the seriousness of the Defendant's conduct and left the firm suggestion that he was participating in some other illegal activity. The Defendant was required to defend innuendo as well as the indictment. As the record now stands the Defendant may well have been convicted because of innuendo and not evidence.

DATED this 13th day of July, 1984.

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Filed July 30, 1984

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Attorney for Defendant,
GEORGE GEBRAYEL

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	CR. LV-83-89, LDG
vs.	)	
GEORGE GEBRAYEL, RAFAEL ACOSTA, et al.,	)	
Defendants.	)	

GEBRAYEL'S SUPPLEMENTAL POINTS AND AUTHORITIES IN SUPPORT OF HIS MOTION FOR NEW TRIAL

In its response to the Defendant GEBRAYEL'S Motion for a New Trial, the

government indulges in the same kind of attack that has marked this prosecution from it inception. Rather than confining itself to the charges made, the government takes out its black crayon and attempts to color GEBRAYEL and everything about him sinister black. Now the court is being told that the government will present evidence that the Defendant set up phony accounts, received loan kick-backs and engaged in extortion activities while a member of the board of directors of the Pan American International Bank. All these charges are nonsense, but none of them have anything to do with the merits of the motion for a new trial.

In his motion for new trail GEBRAYEL stated that the government had accused him of "laundering money" and never offered any proof of that allegation. GEBRAYEL stated that the government

implied and suggested that there was something underhanded going on at the bank, independent of the allegations made in the indictment. Indeed, that implication that the government seeks to make would appear to be the basis for the prosecution in the first instance. However, neither in its lengthy investigation, both pre and post indictment, nor in the trial of this matter was the government able to substantiate the implication that it deliberately made. Indeed, as pointed out, the government did not even offer testimony as to what "laundering money" is.

Regarding the motion to suppress that the government has never responded to on its merits, the government lamely suggests that it was untimely. The court is asked to remember that it was not until a week or two prior to trial that the

government supplied counsel for the Defendants with copies of the statements of Richard Rodriguez. It should also be noted that these statements were ordered to be produced by the government months prior that. Until these statements were provided the Defendants had no basis on which to bring their motion to suppress. As pointed out in Franks v. Delaware, 438 U.S. 154 98 S.Ct. Rptr. 2674 (1978), a motion attacking the truthfulness of the underlining affidavit in support of a search warrant cannot rest upon mere allegations or suspicions. The government suggests that this information could have been obtained by the Defendants in their deposition of Richard Rodriguez. Nothing could be further from the truth. The statement that was taken by counsel for GEBRAYEL of Richard Rodriguez was preliminary in nature. It was intended

by all parties that the statement would continue at a later time. However, due to the efforts of the government, Rodriguez was persuaded not to give any further statements to counsel for the Defendants. Thus, this January 1984 deposition was never completed.

The government also suggests that GEBRAYEL has no standing to bring this motion. That, too, is nonsense. It must be remembered that the government searches, on the occasion of its second search of the ban, the executive offices of the Pan American Bank. These were the offices of GEORGE GEBRAYEL. It has long been settled that a defendant has standing to object to the search of his office. See Gouled v. United States, 255 U.S. 298, 481 S.Ct. 261; United States v. Lefkowitz, 285 U.S. 452, 52 S.Ct. 420. It has even been held that a Defendant

has standing to object to the government's search of an office that he shares with someone else. Mancusi v. DeForti, 392 U.S. 364, 88 S.Ct. 2120.

The government's argument that no evidence was presented at the trial of this matter that was obtained as a result of this issuance of this second search warrant is wishful thinking. Attached hereto as Exhibit "1" is a document receipt prepared by the government and signed by Richard Kruger, after the second search warrant occurred. This, the Defendant GEBRAYEL believes, represents only a portion of the items received by the government as a result of this second search. It is believed that items 5, 6, 11, 12, 14, 19, 23, 24 and 25, were all produced as evidence at the time of the trial of this matter.

CONCLUSION

The government refuses to respond to the allegations that the Defendant GEBRAYEL has made in his motions for new trial and to suppress. The government refuses to address the merits of these motions. Of what is the government afraid? It is submitted that the accusations made in those motions are true and correct. This prosecution has been and will be shown to be one that has been misdirected, misguided and misconceived.

DATED this 30th day of July, 1984.

FRANK J. CREMEN, ESQ.
302 East Carson Avenue, #1004
Las Vegas, Nevada 89101
Attorney for Defendant, GEBRAYEL

DOCUMENT RECEIPT

The following documents were seized on July 13, 1983, pursuant to search warrant number 83-0166M:

1. Signature card and release order - Carlos Sama and Tom Sama.
2. Signature card (Closed) - Carlos Sama.
3. Signature card (Closed) - Emma Wulze.
4. Signature card - Carlos Soto.
5. Signature card - Alberto Bear and Julian Garcia.
6. Signature card (Closed) - Marion Fernandez.
7. One brown folder titled Partout Distributing Inc.
8. Reference card and signature card for Bart C. Sloan.
9. Signature card for Steve Aguirre, Charlene K. Aguire and Bart Sloan.
10. Signature cards for Carlos Sama and Toni Sama.
11. Non Resident Declarations.
12. Thirty four debit and credit memos for J. Garcia regarding repurchase agreements.
13. One Colt Python 357 magnum number E72876, one black leather holster, two speed loader, 18 rounds of ammunition.
14. 18 Currency Transaction reports and one tax forms order status, letter from Flodin.
15. 2 Demand Deposit Accounting forms and one savings accounting new account forms.

16. One microfilm card for June 1983 for account number 5000001693.
17. Seven microfilm cards for 1982 account number 100-0101 through 100-1434.
18. Fifteen microfilm cards dated 1/83 through 6/83 for account numbers 100-0101, 100-2058, 100-1434, 100-2503, 100-2716, 100-1426.
19. Powers of attorney and correspondence for Emma Wulze, Ollie Makdad, Mario Fernandez, Behar.
20. Six rolls of microfilm.
21. Five rolls of microfilm.
22. Six rolls of microfilm.
23. Currency Transaction Reports filed.
24. 1982 and 1983 repurchase agreements and chart of repurchase orders.
25. Stockholder Proxy file of 6-8-83.
26. One blue folder containing miscellaneous Mr. Sheik (sic) F. Amhaz documents.

EXHIBIT "1"

RECEIPT OF COPY

RECEIPT OF A COPY of the foregoing GEBRAYEL'S SUPPLEMENTAL POINTS AND AUTHORITIES IN SUPPORT OF HIS MOTION FOR NEW TRIAL is hereby acknowledged this 30th day of July, 1984.

U.S. ATTORNEYS OFFICE

DONALD CAMPBELL
Attorney-in-Charge
Las Vegas Task Force